

LYNN M. SHEPPARD

IBLA 84-868

Decided December 4, 1985

Appeal from a decision of the Arizona State Office, Bureau of Land Management declaring mining claim A MC 208700 null and void ab initio.

Vacated and remanded.

1. Mining Claims: Lands Subject to

Lands previously conveyed to the State of Arizona are not public lands subject to mineral location, and a mining claim located after patent to the state is null and void.

2. Patents of Public Lands: Suits to Cancel

The Department is barred by provision of 43 U.S.C. § 1166 (1982), from challenging the sufficiency of a patent issued to Arizona in 1940, since more than 6 years have passed since patent issued.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment

A mining claim notice of location allegedly made in 1912 for land patented to Arizona in 1940 may not be filed with the Department under provisions of the Federal Land Policy and Management Act of 1976, and the Department may not adjudicate such a claim, since the patented land is no longer federal land subject to the recordation provisions of the Act.

APPEARANCES: Joe Albo, Esq., Globe, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lynn M. Sheppard has appealed from a July 31, 1984, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared appellant's unpatented Ring Neck lode mining claim, A MC 208700, null and void ab initio. The basis for the decision was the fact that BLM's records showed the land sought by Sheppard was patented to the State of Arizona without reservation of minerals to the United States. BLM concluded the land was therefore not open to the location of mining claims, and found appellant's claim to be null and void ab initio.

A notice of mining claim location by Sheppard, dated September 2, 1983, for the Ring Neck claim was filed for recordation with BLM on November 8, 1983. The claim lies in the W 1/2 sec. 20, T. 2 S., R. 15 E., Gila and Salt River Meridian. The entire W 1/2 sec. 20 was patented in 1940 to the State of Arizona, "subject to any valid intervening rights existing at date of selection." See General Land Office Approval List No. 208 of School Indemnity Lands, approved October 2, 1940, pursuant to provision of the Arizona Enabling Act, Act of June 20, 1910, 36 Stat. 557, 572.

On appeal to this Board, appellant contends the Ring Neck claim was located on October 1, 1912; that assessment work has been performed by appellant and his predecessors-in-interest since 1912; and, further, that all affidavits of assessment needed to maintain the claim were recorded continuously since 1912. Appellant acknowledges the 1940 patent to the State of Arizona. However, he contends the Ring Neck claim is a valid right which

existed prior to patent and is therefore within an exception to the general rule that patented lands may not become the subject of mining claims.

[1] A mining claim located under the general mining laws of the United States on land previously patented without reservation of minerals to the United States is null and void ab initio. All-Kee Associates, 81 IBLA 288 (1984); Ariel C. MacDonald, 52 IBLA 384 (1981) (and see William Mrak, 86 IBLA 16 (1985), mining claims located on state land selections made pursuant to Alaska Statehood Act properly declared void.) Here, appellant's mining claim embraces land which was patented in 1940 to the the State of Arizona. A mining claim located on such lands after patent is properly declared null and void ab initio. However, if appellant's 1983 notice is an amendment of the 1912 location rather than a new location or relocation, the rights (if any) would relate back to a time prior to patent, and it would not be null and void ab initio. For reasons stated below, we find it would be improper for BLM to find the claim valid. However, the converse is also true. It is equally improper to declare the claim invalid unless and until it has been found to be a new location, rather than an amendment.

[2] Appellant now offers to show the location of his claim relates back to a time before patent of the land to Arizona; that is, appellant offers to prove he is the successor to a 1912 location of the same claim. To establish such a contention, appellant is obliged to offer evidence to prove that his claim is the same claim as described in the 1912 location and a chain of title runs from the original locator to him. Appellant, however, has not shown any connection to a prior location exists in fact, although his 1983 notice of location does recite that his claim is a relocation of a prior

"Ring Neck" claim. ^{1/} Even if appellant could prove the existence of a connection between his 1983 location and a 1912 location, there is a legal impediment raised by the 1940 patent to the State which affects our consideration of the position asserted on appeal. This impediment effectively forecloses further inquiry by the Department of the Interior.

Patent without mineral reservation issued in 1940 for the land now claimed by appellant. The issuance of patent operated to divest the Department of authority to adjudicate rights in the patented land. Germania Iron Co. v. United States, 165 U.S. 379 (1897); and see Ed Bilderback, 89 IBLA 263 (1985). Moreover, where more than 6 years have passed since issuance of patent, further consideration of the patent's validity by the Department is barred by provision of 43 U.S.C. § 1166 (1982). See Terry L. Wilson, 85 IBLA 206, 92 I.D. 109 (1985); Rosander Mining Co., 84 IBLA 60 (1984). Section 1166 provides that "[s]uits brought by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents." As pointed out in Wilson and Rosander, the practical legal effect of section 1166 is to prevent any further consideration of such claims by the Department, since the statute operates to deprive the Department of the power to affect title to the land.

[3] Finally, because appellant's 1983 notice of location was filed for lands which were not federal lands and had not been in federal ownership

^{1/} The exact nature of the claimed relationship to a prior location would then become a matter of prime concern. See e.g. R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979), overruled in part on other grounds, Hugh B. Fate, 86 IBLA 215 (1985), pointing out the importance of the distinction between amendment and relocation of mining claims in cases where a claimant seeks to "tack" his mining claim to a prior location in order to achieve priority over intervening claims. A relocation would take subject to intervening rights, but a proper amendment would date back to the date of location.

since 1940, there is now no legal basis which would enable BLM to accept appellant's location notice for recordation. See 43 U.S.C. § 1744 (1982); Ed Bilderback, *supra*. As this Board stated in Bilderback at 267-68:

because the land with which this appeal is concerned has been conveyed out of public ownership, there can be no further Federal adjudication or action taken with respect to the land. Specifically, this means the claims' validity may not be determined and the miners' [documents] cannot be accepted for filing under section 314 of FLPMA.

The Bilderback opinion establishes that the Department lacks authority to adjudicate the validity of claims which are not located on federal lands. BLM simply cannot adjudicate the matters raised by appellant's arguments before this Board, since the land has long since passed from federal ownership. No determination concerning the validity of the arguments urged on appeal can be made by the Department since the land is no longer federal land and no longer subject to Departmental adjudication. It would therefore have been proper for BLM to reject the mining claim recordation documents.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Arizona State Office is vacated and remanded for issuance of a decision rejecting appellant's mining claim recordation documents without a finding as to the validity or invalidity of the claim.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

ADMINISTRATIVE JUDGE HARRIS CONCURRING:

The important point to be made in this case is the distinction between adjudication of mining claims located on Federal land prior to issuance of a patent by the United States without a mineral reservation and those located on lands after such a patent has issued. In this case appellant filed for recordation a mining claim location notice showing a location date of September 2, 1983, for the Ring Neck claim. BLM determined, and the record shows, the land embraced by the claim was entirely within land patented to the State of Arizona in 1940. Land patented by the United States without a mineral reservation is not available for location of mining claims under the general mining laws. Mining claims located on such lands after patent are null and void ab initio. All-Kee Associates, 81 IBLA 288 (1984).

Appellant indicated, however, in his 1983 notice of location that he was "relocating" a previous Ring Neck claim. On appeal appellant alleges in essence, the amendment of a claim by asserting a chain of title in the claim commencing in 1912, prior to the patenting of the land. That allegation does not require further investigation, however, because, assuming the truth of that assertion, BLM has no authority to take action to declare such a claim null and void. The United States no longer has control over that land. As explained in Ed Bilderback, 89 IBLA 263, 267 (1985), where land has been conveyed out of Federal ownership, the Government is without authority to adjudicate the validity of mining claims which predate the patent.

For purposes of adjudication, BLM may properly declare mining claims located on land patented without a mineral reservation after the date of

patent null and void ab initio. However, where the record shows the mineral location predating such a patent, or as in this case, where the record regarding location is unclear and the claimant asserts a chain of title predating the patent, BLM is without authority to rule on the validity of the claim. Any attempted filings made pursuant to section 314 of FLPMA, 43 U.S.C. § 1744 (1982), should be rejected, since those filings are only required of claimants holding unpatented mining claims located on Federal lands. ^{1/} Rosander Mining Co., 84 IBLA 60 (1984); Henry J. Hudspeth, 78 IBLA 235 (1984). Lands which have passed from Federal ownership without a reservation of minerals are not Federal lands.

I agree BLM should not have ruled on the validity of the claim in this case. The proper course of action, as set forth by the majority, is rejection of the recordation filings.

Bruce R. Harris
Administrative Judge

^{1/} The term "Federal lands" is defined in 43 CFR 3833.0-5(f) as

"any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, *supra*, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System."

